IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 34 OF 2007.

Shri Sarang Gangaram Patil
R/at Ulva Village,Tal.Panvel,
Dist. Raigad ..Petitioner
V/s
1. Shri Vijay Survey
A.C.P., Panvel

2 Shri Pravin Pawar,
D.C.P., Zone-II Panvel

3. The State of Maharashtra ..Respondents.

Shri Gajendra Jadhav, Advocate for the petitioner.

Shri A.S. Shitole, A.P.P.for respodnents.

CORAM : J.H. BHATIA, J.

DATE : 17TH JANUARY, 2007.

P.C.

. Heard Mr. Jadhav, learned Counsel for the petitioner, Mr. A.S. Shitole, learned APP for the respondents.

2. Issue notice to respondents.

3. Mr. Shitole, APP waives notice for respondents.

4. The DCP Zone II, Panvel passed an externment order on 26/10/2006 against the present petitioner to extern him from the Districts of Greater Bombay, Mumbai Suburbs, Thane and Raigad Districts for a period of two years on the allegations that four criminal cases are pending against him, he is gunda by character and he is a terror in the locality and it is necessary, to maintain law and order and peace in the area, to extern him.

5. The petitioner has challenged the order by preferring an appeal before the Government. Along with the appeal, he also moved an application to stay the order passed by the DCP. However, his application for stay to the externment order came to be rejected on 3rd January, 2007 by the Appellate Authority and Principal Secretary (Appeal and Security), Home Department, Government of Maharashtra, while his appeal is still pending. By this petition, he seeks to quash the order dated 3rd January, 2007, passed by the Appellate Authority.

6. According to the learned Counsel for the

petitioner, the petitioner is already externed from the four districts, while the area of his activities is shown to be Panvel Police Station only. The externment order is excessive in nature and he is put to great hardship. He states that if the appeal is not decided for long time and stay to the externment order is also not given, the very purpose of filing appeal against the said order would be infructuous. He contended that in similar matter the Court has stayed the externment order pending final hearing and disposal of the appeal, by the Government. In support of this he relied upon the order dated 13th December, 2006, passed by the learned Single Judge of this Court in Criminal Writ Petition No. 2411 of 2006 and four other petitions. In that matter also, externment order was passed by the same officer i.e. D.C.P. Zone-II, Panvel and appeal was preferred, and the Government had refused to stay the externment order. The learned Single Judge relying on Division Bench Judgment of this Court in **Shamkumar Arjun Dalvi V. The State of Mharashtra & Anr., 1988 (1) Bom. C.R. 131.** held that it would be necessary in the interest of justice to stay the externment order. The learned Judge after hearing the parties stayed the externment order pending the appeal with certain conditions. The learned

APP concedes that the present matter cannot be differentiated from the facts of the writ petitions decided on 13/12/2006. In view of the circumstances, I find that it will be in the interest of justice to stay the externment order, pending final hearing and disposal of the appeal preferred by the present petitioner. Therefore, I pass the following order.

7. The State Government shall hear and dispose off and pass the order on appeal preferred by the petitioner, within one month, from this date and in any case, before the end of February, 2007. The order passed by the State Government shall be communicated to the petitioner. During the pendency of the appeal, the externment order shall remain stayed. If the order that may be passed by the State Government is adverse to the petitioner, such order shall not be executed for two weeks, from the date of communication of such order. The same shall be subject to the condition that the petitioner shall attend Panvel Police Station every day between 4.00 p.m. to 5.00 p.m. and shall not indulge in any illegal activity during the pendency of this order.

8. The petition stands disposed off in terms of above directions.

(J.H. BHATIA, J.)